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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

BY EDWARD C. REED, JR.
CLERK

DENNIS WAYNE LIBRO,) CV-N-00-0603-ECR (RAM)
)
)
vs.) MINUTES OF THE COURT
)
)
UNION PACIFIC RAILROAD COMPANY,) DATE: SEPTEMBER 22, 2003
)
a corporation.)

PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE
NANCY GIRAUD

Deputy Clerk: _____ Reporter: NONE APPEARING

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

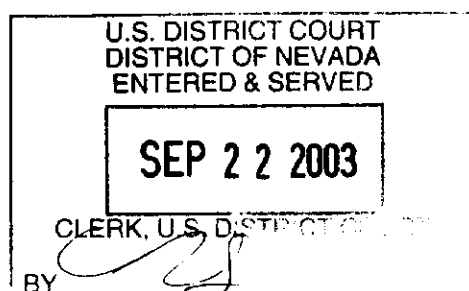
MINUTE ORDER IN CHAMBERS

We now consider defendant's Motion to Dismiss Plaintiff's Second Cause of Action (#52) filed on August 25, 2003.

In an action brought under the Federal Employers' Liability Act ("FELA"), compliance with the three-year statute of limitations is a condition precedent to an injured employee's recovery. Frasure v. Union Pac R.R. Co., 782 F. Supp. 477, 479 (C.D. Cal. 1991). "[T]he failure to commence the action within three years from the date of its accrual bars the plaintiff's remedy and destroys the defendant's liability as well." William v. S. Pac. Transp. Co., 813 F. Supp. 1227, 1231 (S.D. Miss. 1992). Unlike other cases, in a FELA action it is the plaintiff's burden to prove that the action was commenced within the three-year period. Id.

Nonetheless, the statute of limitations issue does not implicate our jurisdiction to entertain plaintiff's Safety Appliance Act claim. Consequently, defendant's motion to dismiss does not raise a proper challenge to our jurisdiction, and is untimely.

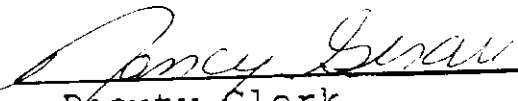
We note, however, that at trial plaintiff will be required to prove that his claims were commenced within the applicable three-year limitation period.



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IT IS, THEREFORE, HEREBY ORDERED that defendant's Motion to Dismiss Plaintiff's Second Cause of Action (#52) is **DENIED**.

LANCE S. WILSON, CLERK

By 
Deputy Clerk